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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Dhirendra Mishra.

CRIMINAL APPEAL No. 37/ 2000.

APPELLANT : Rameshwar
S/o Ramadhar Patel
Aged about 20 years,
R/o Prema Bag,
Baikunthpur,
District Koriya, CG.

Versus

RESPONDENT : State of M.P. (now CG)

CRIMINAL APPEAL No. 43/ 2000.

APPELLANT : Sonalal
S/o Bahadur
Aged about 28 years,
R/o Prema Bag,
Baikunthpur,
District Koriya, CG.

Versus

RESPONDENT : State of M.P. (now CG)

CRIMINAL APPEAL No. 84/ 2000

APPELLANT : 1. Hanslal
S/o Sundarsingh Gond
Aged about 21 years,
R/o Prema Bag,
Baikunthpur,
District Koriya, CG.

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2. Rameshwar
S/o Ramadhar Patel
Aged about 20 years,
R/o Prema Bag,
Baikunthpur,
District Koriya, CG.

(Filed from Central Jail Bilaspur through its Superintendent)

Versus

RESPONDENT : State of M.P. (now CG)

Shri Abhay Tiwari and Shri A.K. Prasad Advocates for the accused/appellants.

Shri U.N.S. Deo and Shri Ashish Shukla Additional Public Prosecutors for respondent/ State.

Since all the abovementioned appeals are arising out of the same judgment dated 27.10.2000 passed in Sessions Trial No. 150/2000, they are being disposed of by this common judgment.

(ORAL) JUDGMENT
{Dated 30-3-2007}

L.C. Bhadoo,J

The accused/appellants have preferred these appeals questioning the legality and correctness of the impugned judgment dated 27.10.2000 whereby the learned Additional Sessions Judge, Baikunthpur, after holding them guilty under sections 302/34 and 323/34 of the IPC, sentenced each of them to undergo

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आदेश पत्रक (पूर्वानुबद्ध)

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imprisonment for life and pay fine of Rs. 200/-, in default of payment of fine to further undergo RI for one month, under section 302 of the IPC, and to undergo SI for one month under section 323 of the IPC. Substantive sentences under both the sections are directed to run concurrently.

2. Case of the prosecution, in brief, is that on 9.3.2000 at about 9 p.m. accused Pappu alias Hanshraj, the son of complainant Deomati, had brought one kilogram of fish which was cooked by Deomati. Pappu alias Hanshraj had invited Rameshwar, Sonalal and Brijlal to his house for dinner. After taking dinner Brijlal left for his residence. When accused Sonalal, Rameshwar and Pappu alias Hanshraj were taking their meal, Hanshraj alias Pappu asked Lallan (since deceased) as to why he was residing in his house. Sonalal and Rameshwar started abusing and threatening Lallan and in the meanwhile, accused persons namely Hanshraj alias Pappu, and Rameshwar started beating Lallan with club, hands and fists. When Deomati tried to intervene, accused Pappu alias Hanshraj gave beating to her also, on account of which both Lallan and Deomati sustained injuries. On hearing the cries raised by Deomati, neighbours namely Shivpujan Mishra, Neeraj Tiwari, Rajesh Kumar, Ramesh Tiwari, Ganesh Tiwari and P.S. Rathia reached the place of occurrence. They took Lallan to the hospital. Deomati lodged the report Ex. P-8 on 10.3.2000 in Police Sation Baikunthpur. Investigating Officer took up the investigation. While in police custody accused Rameshwar gave memorandum of Ex. P-1 in pursuance of which a bamboo

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

stick was seized under Ex. P-2. Blood stained soil and plain soil was seized under Ex. P-3. Site plan Ex. P-4 was prepared. Lallan succumbed to the injuries in the hospital on 12.3.2000. Merg intimation Ex. P-16 was given to the police. Inquest on the body of Lallan was conducted and inquest report Ex. P-14 was prepared. Post mortem on the body of Lallan was conducted by Dr. D.K. Chikunjuri PW-12 in the Community Health Centre, Baikunthpur and in the post mortem report Ex. P-18, he opined that cause of death was injury over the vital organ, brain and stomach and the death was homicidal in nature.

After completion of the investigation the charge sheet was filed in the Court of Chief Judicial Magistrate, Baikunthpur who in turn committed the case to the Court of Sessions Judge, Sarguja from where learned Additional Sessions Judge, Baikunthpur received the same on transfer for trial.

Prosecution, in order to establish the charge against the accused persons, examined as many as 15 witnesses. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they have denied the material appearing against them in the prosecution case and pleaded their innocence and false implication in the case.

We have heard learned counsel for the parties and perused the material available on record.

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Counsel for the accused/appellants have not disputed the fact that the death of Lallan was homicidal in nature. Moreover, PW-1 Ramesh Tiwari, PW-2 Ganesh Tiwari, PW-4 Deomati, have stated in their evidence that accused Pappu alias Hanshraj and Rameshwar attacked the deceased. PW-12 Dr. D.K. Chikunjuri who conducted the post mortem examination on the body of Lallan has stated that the death was homicidal in nature. Thus, it is established that the death of Lallan was homicidal in nature.

As far as involvement of the accused/appellants in the crime in question is concerned, none of the prosecution witnesses has stated that accused Sonalal assaulted Lallan or Deomati. Though in the dying declaration Ex. P-27 recorded by the Investigating Officer Kanahiya Prasad Gupta (PW-13), it is mentioned that Sonalal assaulted Lallan with hand and fist, but the said dying declaration does not bear the signature of Lallan. Moreover, none of the witnesses has stated that Sonalal attacked the deceased or Deomati and as such, there is no evidence in order to connect accused Sonalal with the crime in question and therefore, the conviction of accused Sonalal under section 302 and 323 of the IPC is liable to be set aside.

As far as accused Pappu alias Hanshraj and Rameshwar are concerned, PW-1 Ramesh Tiwari has stated in his evidence that on the fateful night he was in his house and after hearing commotion he along with his brother Ganesh and Neeraj went to the spot and saw that Sonalal was going from the spot whereas accused Pappu alias Hanshraj and Rameshwar were beating Lallan with shoes and hands. When Deomati tried to intervene,

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आदेश पत्रक (पूर्वानुबद्ध)

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accused Pappu alias Hanshraj attacked her also. PW-4 Deomati has stated in her evidence that on the fateful day she had cooked fish and while Pappu alias Hanshraj and Lallan were taking meals, they started abusing each other, in the meanwhile, accused Rameshwar attacked her twice with club. When she went towards Colony, Pappu alias Hanshraj and Sonalal followed her. She has further stated that accused Rameshwar attacked Lallan with club and befell him. PW-12 Dr. D.K. Chikunjuri who conducted the post mortem examination on the dead body of Lallan has stated in his evidence that there was a stitched wound on the right parietal region in the size of 2 inch which was 3 inch above the right eye brow, there was lacerated wound in the right eye in the size of ¼ inch x ¼ inch, there was peeled wound on the left side of the head in the size of ½ inch x 1 ½ inch, there was redness in the brain, membrane, lungs, wind pipe, there was a punctured wound in the stomach in the size of 3 ½ inch out of which food was coming out. He stated that the deceased died on account of the injuries on the vital organs especially on the brain and stomach and the death was homicidal in nature.

From the above evidence it is clear that accused Rameshwar and Pappu alias Hanshraj assaulted the deceased with club, hands and fists. Injury report shows that no fracture was caused and deceased died three days after the incident i.e. on 12.3.2000 in the hospital. Moreover, the quarrel erupted on the spur of moment when deceased and the accused were taking meal at the residence of Pappu alias Hanshraj. Thus from the above

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evidence the involvement of accused Pappu alias Hanshraj is established. However, there is no evidence that accused persons assaulted the deceased with preparation, pre-meditation or with intention to cause his death as the quarrel started on the spur of moment. Thus, from the above facts, evidence on record and the post mortem report it can safely be inferred that when accused persons were attacking the deceased, they had the knowledge that their act is likely to cause death of Lallan and as such offence against accused Pappu alias Hanshraj and Rameshwar does not travel beyond section 304-II of the IPC.

As far as conviction of Pappu alias Hanshraj and Rameshwar under Section 323/34 of the IPC is concerned, Deomati PW-4 has clearly stated in her evidence that both Pappu alias Hanshraj and Rameshwar assaulted her, therefore, their conviction under section 323/34 of the IPC is based on legal and convincing evidence.

In the result, appeal of appellant Sonalal is allowed. The impugned judgment of conviction and sentence passed by the trial Court is set aside so far as it pertains to accused Sonalal. He is acquitted of the charges under sections 302/34 and 323/ 34 of the IPC. He is on bail. He need not surrender to bail bond. His bail bonds are discharged.

Appeals of accused Pappu alias Hanshraj and Rameshwar are partly allowed. Their conviction under Section 302 of the IPC is set aside and instead thereof, they are convicted under Section

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	304-II/34 of the IPC and sentenced to undergo RI for seven years. However, their conviction under section 323/34 of the IPC is maintained. It is stated that accused Pappu alias Hanshraj and Rameshwar are in detention since 11.3.2000 and thereby they have completed more than 7 years of imprisonment. They be set at liberty forthwith if not required in any other case. **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **DHIRENDRA MISHRA** **Judge**

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